Internal Revenue Service

Department of the Treasury

200025064

Index No.: 401.29-00

T:EP:RA:T1

Date 3/29/2000

Attn:

Legend:

Foundation:

Corporation C:

Corporation J:

Corporation M:

Plan X:

Plan Y:

Dear :

This is in response to a ruling request dated December 10, 1998, supplemented by correspondence dated July 13, 1999, in which you requested rulings through your authorized representative under section 401(k) of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in connection with your request.

Foundation is a non-profit medical organization established in connection with Corporation J, a regional medical center with approximately 2,000 employees. Corporation C was a for-profit subsidiary of Corporation J that provided management services to physician practices at Corporation J. These management services included billing, physician contracting and medical and practice management. Corporation M was a professional corporation that provided medical care through contracts with physicians located in Corporation J's service area.

On , Foundation was formed for a number of purposes, one of which was to coordinate medical services provided by Corporation M and other doctors, including those whose practices had been managed by Corporation C. The Internal Revenue Service (the "Service") has ruled that Foundation qualifies as an organization described in section 501(c)(3) of the Code and exempt from tax under section 501(a). Corporation J is a tax exempt organization and is the sole

corporate member of Foundation.

Corporation C sponsored Plan X, a profit-sharing plan with a cash or deferred arrangement ("401(k) plan"). Plan X was established on August 1, 1993, and received its most recent determination letter on July 10, 1995. Under Plan X, all eligible employees received contributions of three percent of pay and a 50 percent matching contribution on the first five percent of pay deferred by participants.

Corporation M also sponsored a 401(k) plan, Plan Y. Established on January 1, 1994, Plan Y was issued a determination letter by the Service dated April 24, 1995. Plan Y provided for discretionary matching and non-elective contributions for all eligible employees.

On February 5, 1996, to better coordinate medical services, Corporation J acquired substantially all of Corporation M's assets, including managed care contracts, and substantially all of Corporation C's assets, and contributed these assets to Foundation (the "Merger"). All employees of Corporation C and Corporation M became employees of the Foundation in the Merger. Corporation M and Corporation C continue in existence as shell corporations without assets or employees. Foundation now provides medical care to its patients through contracts with Corporation M and with other physicians, including some physicians who had contracted with Corporation C for its management services.

As of the date of the Merger, Plans X and Y became frozen and will be terminated after a favorable ruling is issued by the Service. The participants in the Plans are no longer allowed to make elective deferrals, and all employer contributions to the Plans have ceased. Corporation J is responsible for crediting account balances with earnings and losses, making plan distributions, and ensuring that the Plans comply with all requirements under section 401(a) of the Code.

Based on the above facts and representations, you request the following rulings that the freezing and subsequent administration of and distributions from Plans X and Y from the date of the Merger until January 1, 1997:

(1) do not constitute maintenance of a 401(k) plan by a tax exempt organization within the meaning of section 401(k)(4)(B)(ii) of the Code, and

(2) do not adversely affect the qualified status of Plans X and Y under section 401(k).

Prior to the passage of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188 ("SBJPA"), section 401(k)(4)(B)(ii) of the Code provided that a cash or deferred arrangement shall not be treated as a qualified cash or deferred arrangement if it is part of plan maintained by any organization which is exempt from tax under Subtitle A (which includes section 501(a)). Section 1426 of the SBJPA amended this Code section to generally permit tax exempt organizations to establish 401(k) plans effective for plan years beginning on or after January 1, 1997. Section 401(k)(4)(B) now provides that except as otherwise provided, organizations

exempt from tax under Subtitle A may include a qualified cash or deferred arrangement as part of a plan maintained by it.

In this case, participants in Plans X and Y were not permitted to make elective contributions to the Plans, and no further employer contributions were made to the Plans as of the date of the Merger. While Corporation J notified participants, froze the Plans, effected distributions, and credited accounts with earnings and losses for approximately 11 months prior to the effective date of section 401(k)(4)(B) of the Code, we do not believe that these activities caused Plan X and Plan Y to be treated as maintained by an organization exempt from tax. Accordingly, we rule that the freezing and subsequent administration of and distributions from each of Plan X and Plan Y do not constitute maintenance of a 401(k) plan by Foundation or Corporation J under prior section 401(k)(4)(B)(ii), and do not adversely affect the qualified status of the cash or deferred arrangements of Plan X and Plan Y under section 401(k).

This letter does not consider whether Plan X or Plan Y complies with all of the qualification requirements under section 401(a) of the Code. The determination of whether Plan X or Plan Y is qualified under section 401(a) is within the jurisdiction of the Service's Western Area.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it cannot be used or cited by others as precedent.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file with this office.

Sincerely yours,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc: